

SURROGATE'S COURT E-FILING PROTOCOL

The Administrative Judge of the Ninth Judicial District, the Surrogate of Westchester County, and the Chief Clerk of the Westchester County Surrogate's Court hereby promulgate local user protocols to assist users in practice of the New York State Courts E-Filing System (hereinafter referred to as "NYSCEF") implemented in the Westchester County Surrogate's Court in accordance with the program established by the Chief Administrator of the Courts pursuant to Uniform Rules 207.4a and 207.4aa and provide guidance with respect to local practice and procedures used to process filings, fees, and court calendaring. Users should also review the NYSCEF website (www.nycourts.gov/efile). These Protocols do not supersede any statutory or regulatory provisions regarding electronic filing as those are controlling and take precedence.

1) Cases Types Eligible for E-Filing:

Mandatory E-Filing: E-filing is mandatory in Probate, Administration, Accounting, and Miscellaneous proceedings that are commenced in this court on or after May 3, 2017. Except in limited circumstances, all such proceedings must be commenced by filing with the Court electronically through NYSCEF and all subsequent documents in such proceedings must be e-filed.

Consensual E-Filing: E-filing is consensual in Small Estate and Guardianship proceedings. All such proceedings may be commenced by filing with the Court electronically through NYSCEF and, except in limited circumstances, all subsequent documents filed by participating parties must be e-filed.

Hybrid Proceedings: This Court will **not** accept e-filed documents in a proceeding that was previously commenced in paper, unless directed by the Chief Clerk's office.

Documents Must Be E-Filed: Unless otherwise provided in the e-filing rules, this protocol, or where a special exemption is granted (e.g., Oversized Exhibits in Section 3, below) all documents to be filed with the court in a NYSCEF case must be filed with the NYSCEF system.

2) Non-Participation in E-Filing:

- Exemptions from Mandatory E-Filing: An attorney who certifies in good faith that they lack the equipment or knowledge needed to e-file and have no staff member or employee under their direction who has such knowledge and equipment may opt out of e-filing in each mandatory proceeding by filing an opt out form¹ with the court. Attorneys also may be exempted by the court for good cause shown. Proposed intervenors (non-attorneys) and unrepresented non-parties are exempt from e-filing. (Uniform Rule § 207.4-aa(e)(1)).

¹ All forms referred to in the Protocol are available on the Forms page of the NYSCEF website at <https://iappscontent.courts.state.ny.us/NYSCEF/live/forms.htm>

Unrepresented litigants are exempt from e-filing but may choose to participate. (CPLR § 2111)

- Declination of Consent (Consensual Cases): Attorneys who do not consent to e-filing in a consensual proceeding should file a declination of consent with the court and serve the declination on all parties. Non-participating attorneys in a consensual proceeding must attach a Notice of Hard Copy Submission – E-Filed Proceeding (see NYSCEF forms page) to all hard copy filings.

Unrepresented litigants in a consensual proceeding are not required to decline consent or to attach the Notice of Hard Copy Submission – E-Filed Proceeding to any of their hard copy filings.

3) E-Filing Documents in Surrogate’s Court:

- Essential Step Prior to E-Filing: Prior to entering any information into an initial filing, you should run an inquiry on the decedent’s last name, using the first initial, to determine if a file is already open. Due to the numbering system in Surrogate’s Court, an inquiry based on the file number alone may not produce accurate results.

- Initial Entering of Case Information: Any error in the initial entry of case information can significantly delay the proceeding. Please double check to be sure to select the same county as is shown on your papers.

The case name must be entered as follows:

- Initial entry must be identical to the signature on the will
- If the name on the death certificate is different, that becomes an “AKA”
- If the name on the will does not match the signature, that becomes an “AKA”
- No punctuation or spaces should be used when entering the name or “AKA”

- Notice of Hard-Copy Submission: Where, within the e-filing rules, an attorney or an unrepresented litigant who is participating in e-filing submits a document in hard copy, the document must bear a Notice of Hard Copy Submission – E-Filed Proceeding (see NYSCEF Forms page). Attorneys who are exempt from e-filing are required to attach this form to all hard copy filings, while unrepresented litigants who are not participating in e-filing are not so required.

Recorded documents (i.e., Power of Attorney [EPTL §13-2.3], Right of Election [EPTL §5-1.1-A(d)(1)], Assignment of Interest w/Affidavit [22NYCRR §207.47] and Affidavit of Interpreter), may be filed and paid through NYSCEF, but original documents must be filed with the court.

Original Bonds may be filed and paid through NYSCEF, but the original bond must be filed with the court.

- Request for Surrogate’s Court Action: This court DOES NOT require the Request for Surrogate’s Court.

- Death Certificates: In addition to e-filing the death certificate, a hard copy, certified if required, must be filed within two (2) business days of e-filing.

- Wills: Scan the original will, but DO NOT UNSTAPLE. File the original paper will within two (2) business days of e-filing.

- Citations: Submit a proposed citation electronically through NYSCEF only. The Court will complete the citation and upload the completed version to NYSCEF. If your proposed citation requires amendment, you will be notified. Otherwise, an e-mail notification will be sent when the completed citation is posted to NYSCEF. After receipt of the notification, print the citation and serve it, in accordance with the SCPA. Service of the Citation should be accompanied by a Notice of Commencement of Proceeding Subject to Mandatory Electronic Filing or a Notice Regarding Availability of Electronic Filing, as the case may be. (See Forms page on NYSCEF site.)

- Decrees and Orders: E-file proposed Miscellaneous and Accounting decrees and orders through NYSCEF only. No Decrees are needed for Probate or Administrations. Once the decree or order is signed, the court will upload the signed version to NYSCEF and notify all consenting parties that the decree or order has been signed and posted. Users who have requested a certified copy of the decree or order and have paid the appropriate fee via NYSCEF will receive the certified copy by regular mail.

- Stipulations: Stipulations submitted for purposes of being “so ordered” by the Court shall be electronically filed. If the court requires a working copy, the filer must attach proof that the stipulation has been e-filed (e.g., the thank you page or the e-mail notification) to the back of the stipulation when it is submitted to the Court.

- Oversized Exhibits: If an exhibit or attachment is unsuited for electronic filing (e.g., a large map or a videotape), it shall be submitted to the court and served on the other parties in hard copy. Attach a Notice of Hard Copy Submission – E-Filed Proceeding. In addition, a Notice of Hard Copy Exhibit must be completed and electronically filed. (See Forms page on the NYSCEF site.)

- Working Copies: The court requires submission of working copies of e-filed documents for Accounting and Miscellaneous proceedings where it is over 50 pages in length. The filer must attach proof that the document has been e-filed (e.g., the thank you page or the e-mail notification) to the back of all working copies submitted to the court. Working copies must be exact hard copy duplicates of the e-filed documents. They do not become part of the official record and will be destroyed at the disposition of the case.

4) Payment: This court accepts payment of fees required by the SCPA by credit card payments made via NYSCEF or by payments made at the court. There are no fees to use the NYSCEF System, but there are filing and credit card fees. Fees are calculated in accordance with SCPA §2402 based on the documents filed with NYSCEF and the representation of the filing user regarding the size of the estate. Review by the Court may

result in a modification of the fees initially anticipated or charged in connection with this transaction. In the event of any such modification, the Court will contact the filing user by e-mail with the proper amount and request an additional fee, if applicable. This court will not allow the filing of additional documents if the filer owes an outstanding fee in that proceeding.

If choosing to pay by credit card at time of filing on NYSCEF website, enter credit card information directly on website. You must insert the credit card information with each filing; your credit card and appropriate fees will be charged at the time of filing. Make sure credit limit is large enough to cover anticipated filings.

If choosing to pay at the court, be aware that documents are not “filed” until payment is received. The court cannot process the filing until payment is received in full and will delete the filing if payment is not made within a 14-day period after e-filing.

- 5) Notifications: Notification of defective filings will be sent out by e-mail or by telephone, depending on the circumstances. Clerks/staff are available for consultation during regular business hours.

- Return of Requested Documents: To ensure rapid return of documents you have requested from Surrogate’s Court, the court will keep your pre-paid self-addressed envelopes on file. If self-addressed stamped envelopes are not provided, the court will contact the filer or the attorney to advise the documents are ready for pick up.

- Certificates: Upon request made via NYSCEF, the court will mail out Certificates. Users must request and pay for certificates in advance in any e-filed proceeding.

- General Correspondence: All general correspondence shall be electronically filed, no need to follow up with a working copy.

- 6) Signatures: Documents requiring signatures shall be considered to be signed under the circumstances outlined in Uniform Rule §207.4-a(f). When e-filing a document bearing an actual signature, the e-filer is responsible for maintaining the original, executed document pursuant to Uniform Rule 207.4-a(f)(2).

- 7) Sealed Documents, Sealed Cases; Documents Presented for In Camera Review:

- Applying for a Sealing Order: A party who wishes to file a document under seal must file a hard copy of the document, along with the “Notice of Hard Copy Submission” with the Surrogate’s Court. Unless the document is being filed *ex parte*, the filing party shall serve all parties with hard copies of the document, along with the “Notice of Hard Copy Submission” form, in the traditional manner. (See Forms page on the NYSCEF site.)

If the Court grants the sealing request, the Surrogate Clerk will then file the documents in the appropriate manner, as directed. If the application is denied, an order will be issued that directs the party to file the document electronically.

- In Camera Documents: Documents submitted to the Court for in camera review should be delivered to the Court in a sealed envelope conspicuously marked “FOR IN CAMERA REVIEW BY THE COURT” with a Notice of Hard Copy Submission form attached. (See Forms page on the NYSCEF web site.)

8) Decrees, Orders, and Judgments: Decrees, orders, and judgments will be signed in hard copy by the Surrogate and forwarded to the Clerk for filing and scanning into the NYSCEF system, which will then transmit notification to all parties. However, the notification does not constitute service of notice of filing upon any party (see, Uniform Rule § 207.4-a[h]).

Court issued Letters and Certificates of Appointment will be provided in hard copy to the filer via the usual means (SASE, USPS mailing, messenger).